Education (Additional Support for Learning) (Scotland) Bill

3rd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 1 to 12 Schedule 1
- Sections 13 to 18 Schedule 2
- Sections 19 to 26 Schedule 3
- Sections 27 and 28 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 10

**Euan Robson**
191 In section 10, page 9, line 25, leave out <establishing>

**Euan Robson**
192 In section 10, page 9, line 26, at beginning insert <establishing>

**Lord James Douglas-Hamilton**
Supported by: Mr Adam Ingram
207 In section 10, page 9, line 27, after <needs> insert <and what such needs are>

**Lord James Douglas-Hamilton**
28 In section 10, page 9, line 28, leave out <co-ordinated>

**Lord James Douglas-Hamilton**
Supported by: Mr Adam Ingram
208 In section 10, page 9, line 28, at end insert <and what information such a plan should contain>

**Euan Robson**
193 In section 10, page 9, line 29, at beginning insert <establishing>

**Lord James Douglas-Hamilton**
29 In section 10, page 9, line 30, leave out <co-ordinated>

**Lord James Douglas-Hamilton**
Supported by: Mr Adam Ingram
209 In section 10, page 9, line 30, at end insert <and, if so, what (if any) amendments the plan requires,>
In section 10, page 9, line 30, at end insert—

  (c) preparing such a plan for any child or young person, or
  (d) determining in pursuance of section (Duties of education authority in relation to
children and young persons for whom they are responsible) (1) what provision to
make for such additional support as is required by any child or young person
having additional support needs.

Lord James Douglas-Hamilton
Supported by: Mr Adam Ingram

In section 10, page 9, line 33, leave out <seek and take account of relevant> and insert <obtain
and act upon>

Lord James Douglas-Hamilton

In section 10, page 9, line 33, leave out from <such> to end of line 34 and insert <any appropriate
agency or other person.>

Lord James Douglas-Hamilton

In section 10, page 9, line 35, leave out <seek> and insert <obtain>

Lord James Douglas-Hamilton

In section 10, page 10, line 1, at beginning insert <obtain and>

Euan Robson

In section 10, page 10, line 4, leave out <case> and insert <cases>

Euan Robson

In section 10, page 10, line 4, after <(1)(a)(i)> insert <and (d)>

Euan Robson

In section 10, page 10, line 8, leave out from <in> to end of line 12 and insert <the education
authority in doing any of the things referred to in paragraphs (a) to (d) of subsection (1).>

Lord James Douglas-Hamilton

In section 10, page 10, line 10, leave out <co-ordinated>

Donald Gorrie

In section 10, page 10, line 14, leave out <no later than 12> and insert <at least 24>

Lord James Douglas-Hamilton

In section 10, page 10, line 20, at end insert <or—

   ( ) no later than 24 months before the date when a child or young person—
(i) who has a co-ordinated support plan, and
(ii) for whose school education the authority are responsible,

is expected to cease receiving school education.

Dr Elaine Murray
214 In section 10, page 10, line 21, leave out <comply> and insert <have complied>

Lord James Douglas-Hamilton
215 In section 10, page 10, line 23, leave out from first <such> to <appropriate> in line 24 and insert <any appropriate agency or agencies advice and information>

Euan Robson
198 In section 10, page 10, line 23, after <fit> insert <(if any)>

Euan Robson
199 In section 10, page 10, line 26, after <education,> insert—

<(aa) where the authority make a request under paragraph (a), seek the views of—
(i) in the case of a child, that child (unless the authority are satisfied that the child is incapable) and the child’s parent, or
(ii) in the case of a young person, that young person or, if the authority are satisfied that the young person is incapable, the young person’s parent,>

Lord James Douglas-Hamilton
216 In section 10, page 10, line 27, at beginning insert <obtain and>

Lord James Douglas-Hamilton
217 In section 10, page 10, line 28, after <any> insert <advice and>

Euan Robson
200 In section 10, page 10, line 28, leave out first <the> and insert <any appropriate>

Euan Robson
201 In section 10, page 10, line 28, leave out <the request> and insert <a request under paragraph (a)>

Euan Robson
202 In section 10, page 10, line 29, after <request,> insert—

<( ) any views expressed by the child or young person or the child’s or young person’s parent pursuant to paragraph (aa),>
Lord James Douglas-Hamilton
Supported by: Mr Adam Ingram

218 In section 10, page 10, line 34, after <adequacy> insert <and effectiveness>

Lord James Douglas-Hamilton

32 In section 10, page 10, line 36, after <education> insert <, and—

( ) seek and take account of the views of—

(i) in the case of a child, the child (unless the authority are satisfied that the child is incapable) and the child’s parent, and

(ii) in the case of a young person, that young person or, if the authority are satisfied that the young person is incapable, the young person’s parent>

Lord James Douglas-Hamilton

86 In section 10, page 10, line 36, at end insert—

<( ) An agency to whom a request is made under subsection (6) must provide the information requested.>

Euan Robson

203 In section 10, page 10, line 37, leave out <3(3)> and insert <(Duties of education authority in relation to children and young persons for whom they are responsible)(1)(b)>

After section 10

Lord James Douglas-Hamilton

223 After section 10, insert—

<Exchange of information: duties of appropriate agencies etc.

Every—

(a) appropriate agency or other person from whom advice and information have been sought under section 10(2)(a), and

(b) appropriate agency from whom information has been requested under section 10(6)(a),

must consider what help it could provide the education authority and reply to the education authority specifying what that help is within such period as the Scottish Ministers may, by regulation, provide.>

Section 11

Donald Gorrie

133 In section 11, page 10, line 40, leave out <no later than 6> and insert <at least 24>
Lord James Douglas-Hamilton
Supported by: Mr Adam Ingram
219 In section 11, page 10, line 40, leave out <6> and insert <12>

Lord James Douglas-Hamilton
Supported by: Mr Adam Ingram
220 In section 11, page 11, line 5, leave out <6> and insert <12>

Euan Robson
233 In section 11, page 11, line 9, after <fit> insert <(if any)>

Scott Barrie
134 In section 11, page 11, line 27, at end insert—

<( ) the child, if the child has capacity,>

Section 12

Donald Gorrie
135 In section 12, page 12, line 16, leave out <may> and insert <shall>

Donald Gorrie
136 In section 12, page 12, line 17, at end insert <and such regulations shall make provision for the provision of independent advocacy services to persons who make reference to a Tribunal under section 13(1) and to those such persons who appear before a Tribunal>

Ms Rosemary Byrne
224 In section 12, page 12, line 17, at end insert <including provision for legal aid in respect of Tribunal proceedings>

Mr Kenneth Macintosh
256 In section 12, page 12, line 17, at end insert <, including provision for legal aid by way of Advice and Assistance by Way of Representation with regard to persons who may be unable to understand the proceedings or to state their own case effectively because of age, inadequate knowledge of English, mental illness, learning disability or other mental or physical disability>

Schedule 1

Euan Robson
234 In schedule 1, page 22, line 7, leave out <under section 12(5)> and insert <made by the Scottish Ministers>

Euan Robson
235 In schedule 1, page 23, leave out line 17
**Euan Robson**

236 In schedule 1, page 23, leave out line 27

**Ms Rosemary Byrne**

253 In schedule 1, page 26, line 27, at end insert—

<\( \) Such a report shall make—

(a) reference to any failures by education authorities to comply with decisions of Tribunals, and

(b) recommendations as to how such failures may be addressed.>

**Fiona Hyslop**

100 In schedule 1, page 27, line 7, at end insert—

<The President may advise the Commissioner for Children and Young People in Scotland, as established under the Commissioner for Children and Young People (Scotland) Act 2003 (asp 17), of any matters the President considers should be brought to the Commissioner’s attention.>

**Fiona Hyslop**

101 In schedule 1, page 27, line 7, at end insert—

<The President may advise the Scottish Ministers as to any person the President considers should be specified as an appropriate agency in an order made under section 19(2)(c), and the Scottish Ministers must take account of any such advice before making the order.>

**Section 13**

**Fiona Hyslop**

137 In section 13, page 12, line 23, at end insert—

<\( )\) the child, if the child has capacity,>

**Fiona Hyslop**  
**Supported by: Ms Rosemary Byrne**

102 In section 13, page 12, line 29, at end insert—

<\( )\) a decision of the education authority that the child or young person—

(i) has additional support needs,

(ii) has no additional support needs,>

**Ms Rosemary Byrne**

225 In section 13, page 12, line 29, at end insert—

<\( )\) where it has been established that the child or young person has additional support needs but does not require a co-ordinated support plan, failure by the education authority to provide such additional support,>
Ms Rosemary Byrne

In section 13, page 12, line 29, at end insert—

<( ) where it has been established that the child or young person has additional support needs but does not require a co-ordinated support plan, failure by the education authority to fulfil its duty under section (Duties of education authority in relation to children and young persons for whom they are responsible)(1)(b),>
Ms Rosemary Byrne

227 In section 13, page 12, line 36, at end insert—

<() a decision of the education authority that a child or young person who had a Record of Needs in terms of section 60 of the 1980 Act prior to the appointed day, in terms of section 28(1) of this Act, does not require a co-ordinated support plan,>

Robert Brown

257 In section 13, page 12, line 36, at end insert—

<()a decision of the education authority that a child or young person who had a Record of Needs in terms of section 60 of the 1980 Act prior to the appointed day, in terms of section 28(1) of this Act, does not require a co-ordinated support plan,>

Lord James Douglas-Hamilton

34 In section 13, page 12, line 37, leave out <co-ordinated>

Euan Robson

87 In section 13, page 12, line 38, after <plan,> insert <and

() it has not been agreed under section 7(1A) that a plan need not be prepared for the child or young person,>

Euan Robson

88 In section 13, page 12, line 39, leave out <(4)(c) of section 7> and insert <(9)(f)(i) of section 9>

Ms Rosemary Byrne

228 In section 13, page 12, line 39, at end insert—

<() where it has been established that the child or young person does require a co-ordinated support plan, failure by the education authority to nominate a person to co-ordinate the support contained within the plan,>

Lord James Douglas-Hamilton

35 In section 13, page 13, line 1, leave out <co-ordinated>

Ms Rosemary Byrne

138 In section 13, page 13, line 4, at end insert—

<() any of the information contained in the plan by virtue of subsection (4)(b) of section 7,>

Euan Robson

89 In section 13, page 13, line 9, leave out <(4)(c) of section 7> and insert <(9)(f)(ii) of section 9>
Fiona Hyslop
Supported by: Ms Rosemary Byrne

107 In section 13, page 13, line 11, at end insert <, or

(v) failure by the education authority, any person identified in the plan as a person by whom additional support should be provided, or a combination of these persons, to provide the additional support set out in the plan as being required by the child or young person,>

Donald Gorrie

139 In section 13, page 13, line 11, at end insert <, or

(vi) failure by an appropriate agency to comply with section 19(3),>

Robert Brown

258 In section 13, page 13, line 13, at end insert—

(3A) The right to make a reference arising from a failure of the type specified in subsection (3)(ba) does not arise unless—

(a) the person making the reference has detailed the grounds of reference in—

(i) writing, or

(ii) another form which, by reason of its having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording), and

(b) the President of the Tribunal, being satisfied that prima facie a substantial issue arises, grants leave to make the reference,>

Lord James Douglas-Hamilton

36 In section 13, page 13, line 15, leave out <co-ordinated>

Euan Robson

237 In section 13, page 13, line 19, leave out <has> and insert <have>

Robert Brown

259 In section 13, page 13, line 20, at end insert—

( ) Where subsection (4) applies, the Tribunal may refer the reference to the sheriff having jurisdiction where the specified school is situated, where it is of the opinion that—

(a) issues of substantial legal or other complexity are likely to arise, and

(b) the assistance of a solicitor or advocate would be in the best interests of the child or young person concerned,
and, if so, the reference shall proceed as if it were an appeal to the sheriff under section 28F of the 1980 Act; and the reference in subsection (5)(a) of that section to one or more of the grounds of refusal specified in section 28A(3) shall be construed as a reference to one or more of the circumstances in which the duty does not apply, referred to in paragraph 3 of schedule 2 to this Act.

Lord James Douglas-Hamilton
37 In section 13, page 13, line 24, leave out <co-ordinated>

Lord James Douglas-Hamilton
38 In section 13, page 13, line 25, leave out <co-ordinated>

Lord James Douglas-Hamilton
39 In section 13, page 13, line 36, leave out <co-ordinated>

Lord James Douglas-Hamilton
40 In section 13, page 13, line 41, leave out <co-ordinated>

Section 14

Lord James Douglas-Hamilton
41 In section 14, page 14, line 7, after <authority> insert <or any other person identified in the plan as a person by whom additional support should be provided>

Fiona Hyslop
108 In section 14, page 14, line 9, leave out <or (iii)> and insert <, (iii) or (v)>

Fiona Hyslop
53 In section 14, page 14, line 10, after <authority> insert <or any other person identified in the plan as a person by whom additional support should be provided>

Lord James Douglas-Hamilton
42 In section 14, page 14, line 27, leave out <co-ordinated>

Lord James Douglas-Hamilton
43 In section 14, page 14, line 34, leave out <co-ordinated>

Ms Rosemary Byrne
140 In section 14, page 14, line 36, at end insert—

<( ) Where the reference relates to the failure referred to in subsection (3)(d)(vi) of that section, the Tribunal may require the appropriate authority to take such action to address the failure as the Tribunal considers appropriate by such time as the Tribunal may require.>
In section 14, page 14, line 39, at end insert—

<( ) The Tribunal may, at any stage of the proceedings, as it sees fit, order an education authority to arrange for a process of assessment or examination to be carried out on the child or young person in respect of whom the reference was made; and such process shall be carried by such person and on such terms as the Tribunal consider appropriate.>

In section 14, page 14, line 41, leave out <issued> and insert <published>

After section 14

After section 14, insert—

<References to Tribunal and powers of Tribunal: further provision

(1) The Scottish Ministers may by order extend the categories of decision, failure or information in respect of which a reference to the Tribunal under section 13(1) may be made; and without prejudice to the generality such further categories of decision, failure or information may include—

(a) a decision of the education authority—

(i) that the child or young person has, or does not have, additional support needs,

(ii) that a child or young person has additional support needs of a type that the person making the referral considers are not an accurate reflection of the child or young person’s additional support needs,

(iii) to refuse an assessment request as referred to in section 6,

(iv) as to the person, or to the means used, or to be used, to carry out the process of assessment or examination referred to in section 6,

(b) failure by—

(i) the education authority,

(ii) any person identified in any co-ordinated support plan prepared for the child or young person as a person by whom additional support should be provided, or

(iii) a combination of these persons,

to provide the additional support required by the child or young person.

(2) Any order made under subsection (1) may also include provision to allow the President to reject references to the Tribunal arising from the further category of decision, failure or information referred to in that subsection without a hearing where the President is satisfied that the reference prima facie raises no substantial issue.

(3) Orders made under subsection (1) may also make such consequential provision as the Scottish Ministers consider necessary or expedient, including provision as to the Tribunal’s powers in relation to any new category of decision, failure or information that may be referred to it.>
Mr Adam Ingram

262 After section 14, insert—

<Compliance by education authority with Tribunal decision

(1) Where an education authority fails to—

(a) take such action (including complying with a placing request or holding an appeal committee hearing), or

(b) make such amendment,

as was required by a Tribunal under section 14, or fails to do so within such time as the Tribunal required, the appropriate person may refer the failure to the Tribunal.

(2) Where a reference is made to a Tribunal under subsection (1) the Tribunal may require the education authority to take such action as the Tribunal considers appropriate by such time as the Tribunal may require.

(3) In this section “appropriate person” means—

(a) where the failure relates to a child, the parent of the child,

(b) where the failure relates to a young person—

(i) the young person, or

(ii) where the education authority are satisfied the young person is incapable, the young person’s parent.>

Section 15

Lord James Douglas-Hamilton

229 In section 15, page 15, line 8, at end insert—

<( ) make such interim order as it considers appropriate, having regard to the best interests of the child or young person in respect of whom the reference under section 13 was made.>

After section 15

Ms Rosemary Byrne

255 After section 15, insert—

<Independent monitoring body

(1) Ministers shall by regulation establish an independent monitoring body to regulate the implementation of any orders made by a Tribunal.

(2) The independent monitoring body shall have the power to use sanctions against education authorities and appropriate agencies where they fail to comply with the orders made by a Tribunal.

(3) The sanctions referred to in subsection (2) shall be set out by Ministers in regulation.

(4) Ministers may, by regulation, make such further provision in connection with the independent monitoring body as they think fit.>
Before section 16

Lord James Douglas-Hamilton

90* Before section 16, insert—

<Independent advocacy

(1) Every child and young person with additional support needs for whose school education
    the education authority are responsible, and every parent of such children and young
    people, shall have a right of access to independent advocacy services.

(2) It is the duty of every education authority to secure the availability of independent
    advocacy services to such parents, children and young people; and to take appropriate
    steps to ensure that those persons have the opportunity of making use of those services.

(3) It is the duty of providers of independent advocacy services to provide such services—
    (a) to such parents, children and young people, and
    (b) to children or young people who, it appears to them, may have additional support
        needs, and their parents.

(4) In subsection (1) above, “advocacy services” are services of support and representation
    made available for the purpose of enabling the person to whom they are available to
    have as much control of, or capacity to influence, their education or, as the case may be,
    their child’s education as is, in the circumstances, appropriate; and such services are
    “independent” if the person providing the services has no involvement in the exercise by
    or on behalf of the authority of any of their functions (apart from this section).>

Section 16

Donald Gorrie

141 In section 16, page 15, line 17, after <authority> insert <or appropriate agency>

Scott Barrie

142 In section 16, page 15, line 18, at end insert—

<() children with capacity belonging to that area,>

Donald Gorrie

143 In section 16, page 15, line 21, after <authority> insert <or appropriate agency>

Donald Gorrie

144 In section 16, page 15, line 24, leave out from <in> to end of line 25 and insert <with the relevant
    authority or agency.>

Lord James Douglas-Hamilton

57 In section 16, page 15, line 25, leave out <their functions under this Act> and insert <any of their
    functions>
Section 16

145 In section 16, page 15, line 27, after <parent> insert <, child with capacity>

146 In section 16, page 15, line 28, after <authority> insert <or appropriate agency>

147 In section 16, page 15, line 31, after <parent> insert <, child with capacity>

239 In section 16, page 15, line 31, leave out <appeal> and insert <refer>

221 In section 16, page 15, line 32, at end insert—

(3A) Where agreement is reached between the parties participating in mediation, it is the responsibility of—
(a) the provider of mediation services to draft, or to secure the drafting of, that agreement in writing, and
(b) each party (or a person authorised to do so on behalf of a party) to sign the agreement, provided the party is satisfied that the written agreement accurately reflects the agreement reached in mediation.

(3B) An agreement under subsection (3A) is legally binding on the parties that have signed it (except inasmuch as it would require any party to do anything unlawful); but any party may revoke the agreement by notice in writing providing reasons for the revocation.

148 In section 16, page 15, line 33, after <authority> insert <or appropriate agency>

185 Move section 16 to after section 11

Section 17

149 In section 17, page 15, line 38, at end insert—

( ) any child with capacity belonging to that area.

230* In section 17, page 16, line 8, at end insert—

( ) Such regulations—

(a) must not require any parent or young person—
to refer any disagreement with the authority to the dispute resolution services provided in accordance with the arrangements, or

(ii) to pay any fee or charge for the provision of the dispute resolution services, and

(b) do not affect the entitlement of any parent or young person to refer any matter to a Tribunal.

Rhona Brankin

186 Move section 17 to after section 11

Schedule 2

Euan Robson

91 In schedule 2, page 27, line 25, leave out <in writing>

Euan Robson

92 In schedule 2, page 27, line 29, leave out <in writing>

Lord James Douglas-Hamilton

58 In schedule 2, page 28, line 2, at end insert—

< (2A) Where the parent of a child having additional support needs makes a request in writing to the education authority to place the child in the school specified in the request, being an independent or grant-aided school, together with confirmation in writing of the specified school’s willingness to accept the child, the authority may place the child accordingly, and meet the fees and other necessary costs of the child’s attendance at the specified school to such extent as it considers appropriate, having regard to all the circumstances.

(2B) In deciding, under sub-paragraph (2A), whether to agree to the placing request, the education authority must take into account—

(a) whether the child’s additional support needs can be met in any school under their management at which a place is available and, if so, whether it would be in the child’s interests to be placed in that school, and

(b) whether it would be in the child’s interests to be placed in the specified school.>

Lord James Douglas-Hamilton

59 In schedule 2, page 28, line 3, leave out <or (2)> and insert <, (2) or (2A)>

Robert Brown

263 In schedule 2, page 28, line 38, after <needs> insert <of a severity or type>

Robert Brown

264 In schedule 2, page 28, line 38, after <or> insert <level of>
Robert Brown

265 In schedule 2, page 29, line 3, after <make> insert <adequate>

Euan Robson

93 In schedule 2, page 29, line 37, leave out from <and> to end of line 41

Lord James Douglas-Hamilton

60 In schedule 2, page 29, line 40, at beginning insert <(except in the case of a request made by virtue of sub-paragraph (2A))>

Lord James Douglas-Hamilton

61 In schedule 2, page 30, line 9, after <request> insert <(other than a parent who made a placing request by virtue of sub-paragraph (2A))>

Section 19

Dr Elaine Murray

222 In section 19, page 16, line 25, leave out <must> and insert <has a duty to>

Lord James Douglas-Hamilton

94 In section 19, page 16, line 26, leave out from <unless> to end of line 28

Fiona Hyslop

150 In section 19, page 16, line 26, leave out from <unless> to the end of line 28 and insert—

<( ) Subsection (3) does not require an appropriate agency to do anything which—

(a) they do not otherwise have power to do, or

(b) would result in unreasonable public expenditure being incurred.>

Lord James Douglas-Hamilton

44 In section 19, page 16, leave out line 28

Robert Brown

266 In section 19, page 16, line 28, leave out <unduly> and insert <substantially>

Lord James Douglas-Hamilton

45 In section 19, page 16, line 28, at end insert <, or—

( ) is not appropriate to the additional support needs of the child or young person.>

Lord James Douglas-Hamilton

95 In section 19, page 16, line 29, after <that,> insert <on application by the education authority or otherwise,>
Ms Rosemary Byrne

151 In section 19, page 16, line 38, leave out from <, or> to end of line 39

After section 19

Ms Rosemary Byrne

187 After section 19, insert—

<Monitoring of implementation of Act

(1) Within—

(a) 12 months of the date on which the provisions of this Act are all in force, and
(b) each subsequent period of 12 months beginning on the anniversary of that date,
the Scottish Ministers must prepare, and lay before the Scottish Parliament, a report on
the operation and implementation of this Act.

(2) A report under subsection (1) must include an assessment of whether the Act is being
implemented in such a way that children or young persons with similar types of
additional support needs are being provided with the same level of support in each
education authority area.

(3) If an assessment carried out in pursuance of subsection (2) shows that the level of
support being provided to such children or young persons varies between education
authority areas, the report under subsection (1) must specify what action the Scottish
Ministers intend to take to ensure that the same level of support is provided in each
education authority area (that level being at least the minimum standard of support
required to be provided under this Act).>

Section 21

Lord James Douglas-Hamilton

231 In section 21, page 17, line 10, leave out <wholly or mainly>

Section 22

Euan Robson

206 In section 22, page 17, line 33, leave out <3(3)> and insert <(Duties of education authority in
relation to children and young persons for whom they are responsible)(1)(b)>

Lord James Douglas-Hamilton

46 In section 22, page 17, line 37, leave out <co-ordinated>

Section 23

Euan Robson

240 In section 23, page 18, line 14, leave out <issue> and insert <publish>
Euan Robson

241 In section 23, page 18, line 14, leave out <re-issue> and insert <re-publish>

Euan Robson

242 In section 23, page 18, line 15, after <authorities> insert <and appropriate agencies>

Robert Brown

267 In section 23, page 18, line 19, at end insert—

<( ) the particular circumstances or factors which may give rise to a substantial issue referred to in sections 13(3A) and (References to Tribunal and powers of Tribunal: further provision)(2),>

Lord James Douglas-Hamilton

47 In section 23, page 18, line 22, leave out <co-ordinated>

Euan Robson

204 In section 23, page 18, line 24, leave out <3(3)> and insert <(Duties of education authority in relation to children and young persons for whom they are responsible)(1)(b)>

Ms Rosemary Byrne

Supported by: Lord James Douglas-Hamilton

152 In section 23, page 18, line 27, at end insert—

<( ) appropriate persons to carry out a process of assessment or examination under section 6(1)(b), and the professional qualifications of such persons,>

Euan Robson

243 In section 23, page 18, line 28, at end insert—

<(2A) Before publishing a code of practice under subsection (1), the Scottish Ministers must consult—

(a) each education authority and appropriate agency, and
(b) such other persons as they think fit.

(2B) The Scottish Ministers must lay before the Scottish Parliament a draft of any code of practice they propose to publish under subsection (1).

(2C) The Scottish Ministers must not publish the code until after the expiry of the period of 40 days beginning with the day on which the draft was laid before the Parliament.

(2D) The Scottish Ministers must, in the published code of practice, take account of any comments on the draft expressed by the Parliament within that period.

(2E) In calculating any period of 40 days for the purposes of subsections (2C) and (2D), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.>
In section 23, page 18, line 29, after <authorities> insert <and appropriate agencies>

In section 23, page 18, line 30, leave out <issued> and insert <published>

In section 23, page 18, line 36, leave out <issued> and insert <published>

In section 23, page 18, line 37, leave out <re-issued> and insert <re-published>

In section 23, page 18, line 37, at end insert—

Any code prepared or revised and re-issued under this section must be laid before the Scottish Parliament and the Scottish Ministers may not issue the code until it has been approved by resolution of the Parliament.

Before section 24

Requests under this Act: further provision

(1) References in this Act to a “request” are to a request which—

(a) is in—

(i) writing, or

(ii) another form which, by reason of its having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording), and

(b) contains a statement of the reasons for making the request.

(2) Where an education authority decide not to comply with any request made to them under this Act, the authority must—

(a) inform the person who made the request of that decision,

(b) in so doing, give reasons for the decision,

(c) except where the request was of the type specified in section 5(2)(b), provide the person who made the request with information as to—

(i) the mediation services provided in pursuance of arrangements made by the authority under section 16(1), and

(ii) any procedures for the resolution of disputes established by the authority in pursuance of any regulations under section 17,
(d) where the request was made under section 8(4), inform the person who made the request of the right under section 13(1) to refer the decision to a Tribunal, and
(e) where the request was a placing request, inform the person who made the request of—
   (i) the right under paragraph 5 of schedule 2 to refer the decision to an appeal committee, or
   (ii) the right under section 13(1) to refer the decision to a Tribunal,
   (as appropriate).

Lord James Douglas-Hamilton

96F As an amendment to amendment 96, line 5, after <writing,> insert—
   <( ) where the request is made by a person who by reason of disability is unable to make the request in writing, an alternative format,>

Lord James Douglas-Hamilton

96D As an amendment to amendment 96, line 12, at end insert <in writing>

Scott Barrie

96B As an amendment to amendment 96, line 13, at beginning insert <subject to subsection (3),>

Ms Rosemary Byrne

96E As an amendment to amendment 96, line 13, at end insert—
   <( ) when the request was an assessment request under section 6, provide such information and such reasons in writing and within 14 days of receiving the request,>

Fiona Hyslop

96A As an amendment to amendment 96, line 20, leave out <where the request was made under section 8(4)> and insert <where the refusal of the request gives rise to a right of referral under section 13(1)>

Scott Barrie

96C As an amendment to amendment 96, line 27, at end insert—
   <(3) Where the request was made by a child and it would be contrary to the child’s best interests to be given the reasons for the decision in relation to the request, or any other information connected with the decision, an education authority must give reasons for the decision to the child’s parents instead of the child.>
Section 24

Scott Barrie

153 In section 24, page 19, line 8, at end insert—

<“child with capacity” means—

(a) in relation to the provision of information or advice or the giving of a copy of a plan, a child capable of having a general understanding of the information, advice or plan,

(b) in relation to the making of a request or referral, a child who has a general understanding of the nature of the request or referral and the consequences of making it, and

(c) in relation to a disagreement or dispute, a child who has a general understanding of the nature of the disagreement or dispute and the consequences of a failure to resolve it,

and a child of twelve years of age or more shall be presumed to be of sufficient age and maturity to have understanding; and related expressions shall be construed accordingly.>

Lord James Douglas-Hamilton

48 In section 24, page 19, line 9, leave out <co-ordinated>

Lord James Douglas-Hamilton

62 In section 24, page 19, line 11, leave out <co-ordinated>

Lord James Douglas-Hamilton

232 In section 24, page 19, line 12, at end insert—

<“disability” has the same meaning as in the Disability Discrimination Act 1995>

Lord James Douglas-Hamilton

188 In section 24, page 20, line 11, after <person> insert—

<(a)>

Lord James Douglas-Hamilton

189 In section 24, page 20, line 14, at end insert—

<(b) who would fall within paragraph (a) but for the fact that the child or young person has been temporarily removed from, or has not commenced, such education pending the resolution of any dispute or outcome of any appeal concerning the child’s or, as the case may be, young person’s education.>
After section 24

Euan Robson

248 After section 24 insert—

<Transitional provision: recorded children and young persons

(1) This section applies to any child or young person—

(a) for whose school education an education authority are, at the commencement date, responsible, and

(b) who, immediately before that date, was a recorded child or young person within the meaning of the 1980 Act.

(2) Such a child or young person is, for the purposes of this Act, to be taken to have additional support needs.

(3) The education authority must, before the end of the period of 2 years beginning with the commencement date, establish, in accordance with the arrangements made by them under section 4(1), whether the child or young person requires a co-ordinated support plan.

(4) Until the appropriate date, the education authority must ensure that the provision made by them in pursuance of section (Duties of education authority in relation to children and young persons for whom they are responsible)(1)(a) for the additional support required by the child or young person is no less than the provision which was, immediately before the commencement date, made for the child or young person under section 62(3) (duty of education authority to provide for special educational needs of recorded children and young persons) of the 1980 Act.

(5) In subsection (4), “the appropriate date” means—

(a) where the education authority establish in pursuance of subsection (3) that the child or young person requires a co-ordinated support plan, the date on which they so establish that matter,

(b) where the authority establish in pursuance of that subsection that the child or young person does not require such a plan, the date of expiry of the period of 2 years beginning with the date on which they so establish that matter, or

(c) if there is a significant change in the child’s or young person’s additional support needs, the date on which the authority establish the occurrence of that change, whichever occurs first.

(6) In this section—

“the commencement date” means the date on which this section comes into force, and

“the education authority” means the education authority responsible for the child’s or young person’s school education.>

Section 25

Euan Robson

249 In section 25, page 20, line 23, after <consequential,> insert <further>
Schedule 3

Euan Robson

205 In schedule 3, page 33, line 8, after <section> insert <(Duties of education authority in relation to children and young persons for whom they are responsible) or>

Section 27

Euan Robson

250 In section 27, page 21, line 1, after <except> insert <section 12(5),>

Robert Brown

268 In section 27, page 21, line 4, leave out <section> and insert <sections (References to Tribunal and powers of Tribunal: further provision) and>

Euan Robson

251 In section 27, page 21, line 5, leave out <is> and insert <, or

( ) regulations under section 12(5),

is or are>

Euan Robson

252 In section 27, page 21, line 6, after <order> insert <or regulations>

Section 28

Mr Adam Ingram

190 In section 28, page 21, line 10, leave out <Additional>